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In The

Supreme Court of the United States

October Term, 1988

ESTATE OF ANDERSON WILLIS, ET AL.,

Petitioners,

v.

ESTATE OF JOHN RILEY, ET AL.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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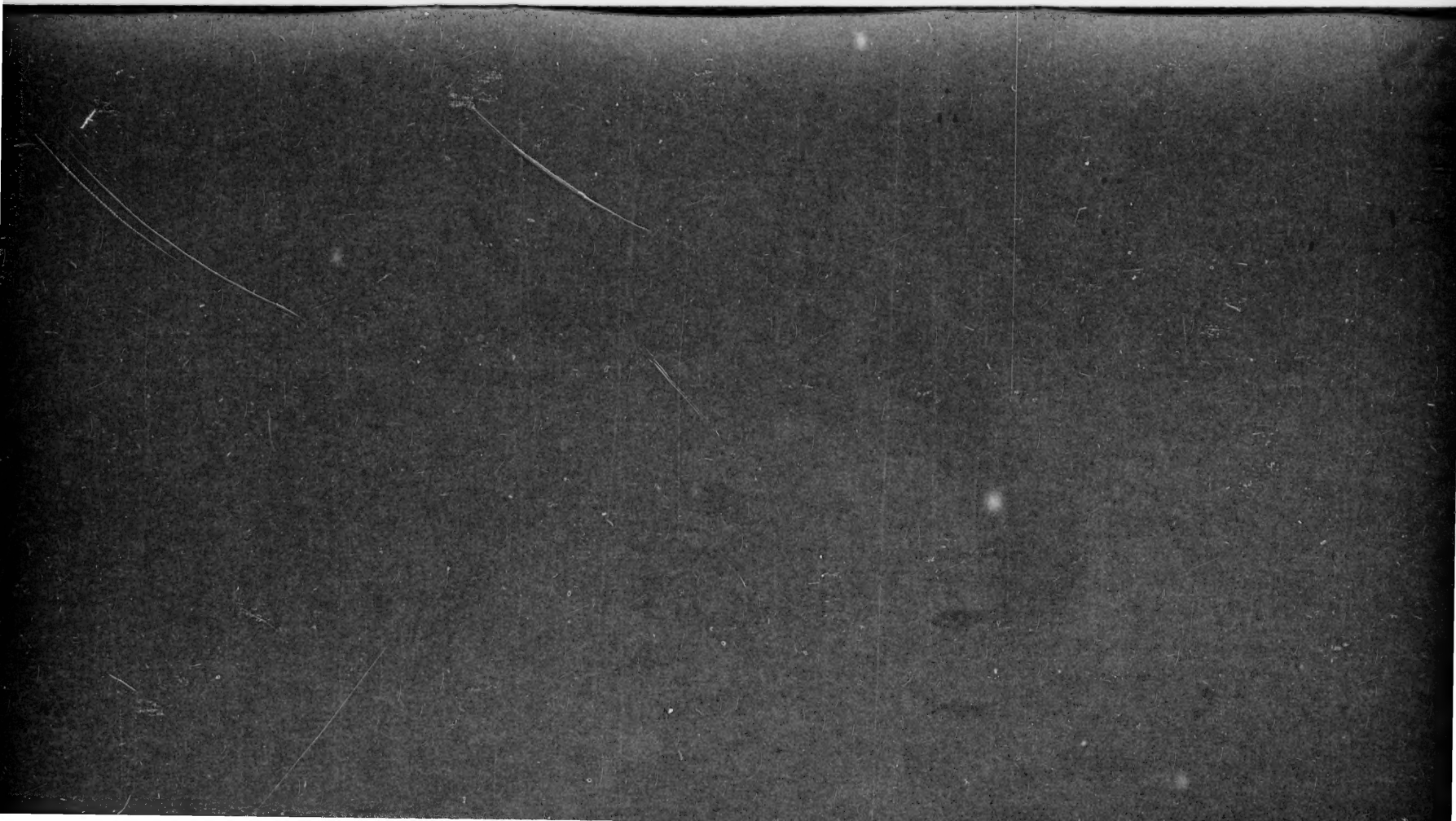

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TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

Freestone County, the Freestone County Sheriff's Department, Patsy Stroud and Judge Joe Roger Alderman, Defendants/Appellees in the courts below, respectfully submit this Brief in Opposition to the Petition for Writ of Certiorari, and show the Court the following:

OPPOSITION POINT ONE

The petition for Writ of Certiorari should not be granted since the federal court of appeals decision does not raise the type of issues necessary for review by this Court.

FACT STATEMENT

On March 2, 1987, the Plaintiffs (Petitioners herein) amended their complaint to add as defendants Freestone County, Judge Joe Roger Alderman, Patsy Stroud (in her official capacity as Tax Assessor for Freestone County), the Freestone County Sheriff's Department, (all collectively known as the "Freestone County Defendants") and various private landowners of a certain tract of land in Freestone County, Texas. Plaintiffs alleged that their ancestor, Anderson Willis, purchased the particular tract of land back in 1868. The suit was brought under the Civil Rights Act, 42 U.S.C. Sections 1981-1988, and the United States Constitution.

The Defendants filed Motions to Dismiss under Rule 12(b) of the Federal Rules of Civil Procedure, pleading the affirmative defense of limitations and claiming entitlement to dismissal for the plaintiffs' failure to properly allege a cause of action against the particular Defendants.

On August 7, 1987, the district court entered its order dismissing the case for three reasons: 1) the complaint itself affirmatively showed that the claim was barred by limitations under Texas state law; 2) the complaint failed to state a cause against any of the defendants; and 3) the

complaint failed to allege any specific acts of wrongdoing against any of the defendants.

The case was appealed to the Fifth Circuit. On August 25, 1988, in a per curiam decision, the court affirmed the lower court opinion, finding that the case failed to present sufficient facts to justify a tolling of the statute of limitations. The Petition for Rehearing was denied on September 28, 1988.

Plaintiffs' complaint centered around certain allegations of wrongdoing which occurred more than one hundred years ago. The plaintiffs' ancestor, Anderson Willis, purchased a tract of real property located in Freestone County, Texas. Plaintiffs complain that following Willis' acquisition of the land, various unidentified persons committed fraudulent acts which deprived Mr. Willis and his family of portions of the land tract. The acts alleged include:

a) the forgery of certain promissory notes with Mr. Willis as maker; these notes were reduced to judgment sometime later and portions of Mr. Willis' real property were foreclosed upon by sheriff's deed in satisfaction of the judgment.

b) the forgery of a will purporting to be executed by Anderson Willis devising only a portion of the land owned by Anderson Willis to his offspring;

c) the entry of a judgment in a lawsuit concerning a county boundary dispute between Anderson County and Freestone County that allegedly infringed upon the property owned by Anderson Willis;

d) removal of Anderson Willis' name from the tax rolls in Freestone County thereby omitting recordation of his name as owner of the real property in question;

e) the entry of a judgment in a lawsuit concerning the boundary limitations of the so-called "Jose Ygnacio Aguilera" Mexican grant that allegedly infringed upon the property owned by Anderson Willis;

f) invasion and trespass of the family cemetery plot by certain unknown and unnamed individuals.

The foregoing allegations are the most specific acts of wrongdoing set out in the complaint. Plaintiffs never identified any of the particular persons that participated in these wrongful acts. Included in the complaint were several pages of general historical allegations of wrongdoing, prejudice and injustice allegedly committed against Blacks residing in Freestone County, Texas; however, there were no allegations that the many individual Plaintiffs themselves actually suffered any of the alleged wrongs at the hands of any of the named Defendants. The Plaintiffs identified the Ku Klux Klan or a similar group of persons as the main instrumentality in the "systematic" deprivation of their property. The Freestone County Sheriff's Department and the Tax and Deed Records Department of the County were alleged to have "participated directly in this lawlessness," but there was no identification of the individual wrongdoers within the governmental entities.

In general, Plaintiffs asserted that they were unable to bring this lawsuit until the year 1984, although the specific alleged wrongs primarily occurred prior to the turn of the century. In their complaint, Plaintiffs admit

that while Black American citizens generally encountered difficulty in seeking redress through the judicial system, these barriers were substantially overcome during the Civil Rights reform era led by Dr. Martin Luther King in the 1960's.

RESTATEMENT OF OPPOSITION POINT ONE

The petition for Writ of Certiorari should not be granted since the federal court of appeals decision does not raise the type of issues necessary for review by this Court.

ARGUMENT AND AUTHORITIES UNDER OPPOSITION POINT ONE

A. Dismissal Under Federal Rule of Civil Procedure 12(b)(6) was Proper Because the Claim was Barred by the Applicable Statute of Limitations.

The district court dismissed the case under Federal Rule of Civil Procedure 12(b)(6). Under Rule 12(b), a court may determine whether a claim is barred by the applicable statute of limitations unless, under Rule 56, the motion must be converted into one for summary judgment in order for the court to hear evidence outside of the pleadings. Throughout their appeal of this case, Plaintiffs' consistently misconstrue the trial court's decision by arguing that summary judgment was entered and that the court improperly weighed the evidence and judged the credibility of the testimony. In fact, no evidence was presented to the court; the opinion clearly

states that the court considered only the pleadings of the parties and examined the complaint to determine the sufficiency of the allegations. Dismissal occurred because the court found no set of facts, as pleaded in the complaint or explained in the subsequent pleadings, which would entitle the plaintiffs to relief.

1. The Applicable State Statute of Limitations Controls this Case

Each of the lower courts below followed the procedure set forth by this Court in *Wilson v. Garcia* for determining the applicable limitations period for actions brought under the Civil Rights Act. *471 U.S. 261, 85 L.Ed.2d 254.* Since the Act itself contains no limitations provisions, federal courts must look to the analogous state statute to determine if the claim is time-barred. The appropriate state law provision controls unless it is "inconsistent with the federal policy underlying the cause of action under consideration." *Board of Regents v. Tomanio,* 446 U.S. 478, 64 L.Ed.2d 440 (1980). Additionally, state law governs issues of tolling and application of the limitations period. *Wilson,* 471 U.S. at 268-69.

This Court examined the history and legislative intent surrounding the Civil Rights Act of 1871:

> The specific historical catalyst for the Civil Rights Act of 1871 was the campaign of violence and deception in the South, formulated by the Ku Klux Klan, which was denying decent citizens their civil and political rights.

Wilson, 471 U.S. at 276, 85 L. Ed. 2d at 267. No one would deny the historical pattern of discrimination against

Black citizens in our country *at one time*, but for over one hundred years citizens of every race and gender have had a congressionally created judicial redress for acts which operate to violate those citizens' civil rights, whether the perpetrators are private individuals or government actors acting under color of law. Because a violation of the Act is an injury to the individual rights of the victim, Section 1983 claims are characterized as tort claims for personal injuries. *Id.*, 471 U.S. at 279, 85 L. Ed. 2d at 268-69. The personal injury characterization is consistent with the underlying federal policies behind the Civil Rights Act. *Id.*

Section 16.003 of the Texas Civil Practice and Remedies Code sets forth the limitations period applicable to tort claims for personal injuries. The statute provides:

> (a) A person must bring suit for trespass for injury to the estate or to the property of another, conversion of personal property, taking or detaining the personal property of another, personal injury, forcible entry and detainer, and forcible detainer not later than two years after the day the cause of action accrues.

Tex. Civ. Prac. Rem. Code Section 16.003 (Vernon 1988). This statute governs the limitations period for claims under 42 U.S.C. Section 1983. *Peter Henderson Oil Co. v. City of Port Arthur*, 806 F.2d 1273 (5th Cir. 1987); *Longoria v. City of Bay City*, 779 F.2d 1136 (5th Cir. 1986) (citing to old Texas Revised Civil Statute article 5526(1) which is now recodified as Section 16.003 of the Texas Civil Practice and Remedies Code). Accordingly, both the trial court and the Fifth Circuit found that Plaintiffs' suit was

governed by the two year limitations period set out in Section 16.003 of the Code.

2. Federal Law Determines Accrual of the Cause of Action

While state law governs the length of the limitations period, federal law determines the point in time in which the cause of action accrues. *Longoria,* 779 F.2d at 1138. The federal standard holds that a cause of action accrues when the plaintiff knows or has reason to know of the injury which is the basis of the action. *Id. citing Lavellee v. Listi,* 611 F.2d 1129, 52 A.L.R.Fed. 773 (5th Cir. 1980). Essentially, "the limitations period begins to run when the plaintiff either is or should be aware of both the injury and its connection with the alleged acts of the defendant." *Longoria,* 779 F.2d at 1138.

The district court examined the facts as pleaded and found that the plaintiffs (or their ancestors) either knew or had reason to know of the alleged fraudulent land schemes by at least the year 1904 and, in all likelihood, were on notice of the problems as early as the year 1870. Even assuming that the allegations of wrongdoing are true, the complaint itself reveals several identifiable points in time in which Anderson Willis or his immediate family knew or should have known of problems with their land titles and likewise knew or should have known of attempts by other persons to defraud Willis of his property. For example, Plaintiffs allege that certain unknown persons "created fraudulent promissory notes wherein Anderson Willis was the note holder and his children were the debtors." According to the complaint, these notes were negotiated and eventually reduced to

judgment liens on the Willis property. Apparently the foreclosures occurred in 1904 and Plaintiffs admitted that knowledge of the wrong was acquired when the foreclosure was accomplished. Additionally, Plaintiffs allege that Anderson Willis' name was forged on a will purporting to devise only 100 acres of his property to his son, Alec. This wrong was certainly known to the family at the time of Anderson Willis' death. Plaintiffs also allege that certain fraudulent actions resulted in Anderson Willis' name not appearing on the tax rolls until 1881, even though the property was purchased in 1869. Clearly, this particular injury was known by the family no later than the year 1881. Without exception, all of the alleged acts were discovered or should have been discovered decades, if not a century, ago. On these bases, the trial court and the Fifth Circuit concluded that absent some tolling exception, the plaintiffs "should have filed this suit approximately one hundred years ago."

3. State Law Exceptions to Toll the Limitations Period

The courts below found that the plaintiffs presented no facts which would operate to toll the running of limitations nearly one hundred years until the date suit was filed. Plaintiffs argue that they were precluded from bringing suit within the proper period by the acts of various unknown persons who fraudulently concealed the cause of action from the plaintiffs and effectively barred the plaintiffs' access to the court to seek redress for the injuries, once the existence of the claim was known. These allegations fall short of establishing the

essential elements for fraudulent concealment in this case.

As noted above, federal courts examine state law regarding tolling exceptions to the applicable limitations statute. *Wilson*, 471 U.S. at 269; *Tomanio*, 446 U.S. at 487. State tolling provisions are not inconsistent with the policies of Section 1983 claims. *Tomanio*, 446 U.S. at 488; *Cross v. Lucius*, 713 F.2d 153, 158 (5th Cir. 1983).

Under Texas law, in the absence of fraud, a plaintiff's ignorance or inability to learn that a cause of action exists will not prevent the limitations period from running. An exception exists when there has been a relationship of trust and confidence between the parties and the party committing the wrongful act actively undertakes to conceal the wrong. *Thompson v. Barnard*, 142 S.W.2d 238, 241 (Tex. Civ. App. 1940), *aff'd*, 138 Tex. 277, 158 S.W.2d 486 (Tex. Comm'n App. 1942, opinion adpt'd). Fraudulent concealment by the defendant causes the starting point for limitations to shift from the date of the injury to the time the cause of action is discovered or should have been discovered in the exercise of reasonable diligence. *Leeds v. Cooley*, 702 S.W.2d 213 (Tex. App. – Houston [1st Dist.] 1985, no writ); *Borderlon v. Peck*, 661 S.W.2d 907 (Tex. 1983). In order for the doctrine to apply, the defendant himself must have actual knowledge that the wrong occurred and there must be fixed purpose to conceal the wrong. *Leeds*, 702 S.W.2d at 215. Implicit within the doctrine is the idea that the defendant both committed the wrongful act and that he actively and purposefully concealed the wrong. The estoppel effect of the doctrine

ceases "when a party learns of facts, conditions or circumstances which would cause a reasonably prudent person to make inquiry that, if pursued, would lead to discovery of the concealed cause of action." *Borderlon*, 661 S.W.2d at 907.

None of the essential elements for fraudulent concealment exist in this case. Plaintiffs never identified any kind of "special relationship of confidence and reliance" existing between them and any of the defendants that would give rise to a duty to disclose. More importantly, there were no allegations that the particular defendants to this suit participated in an injury to the plaintiffs or that any defendant had actual knowledge of a wrong committed which was actively concealed. Plaintiffs never identified a single instance where any named defendant sought to conceal information from the plaintiffs. Finally, the plaintiffs admitted in their complaint that they knew of their injury at some point in time subsequent to the alleged events; that knowledge, as the trial court noted, was gained some one hundred years ago.

Apparently in addition to the argument of fraudulent concealment, Plaintiffs urge that some type of equitable tolling of the statute should be applied in this case. Plaintiffs point to the historical facts of the social system facing Blacks in this country after the Civil War, but they never particularized their complaints as to themselves and their ancestors. Allegations of generalized historical trends cannot operate to allow these particular individuals the right to an equitable tolling of the statute. Moreover, Plaintiffs themselves conceded in their pleadings that during the Civil Rights Era of the 1960's, Black

Americans in general became cognizant of their rights to examine public records and seek the protection of their civil rights through the judicial system. Thus, the district court and the Fifth Circuit concurred that any equitable tolling of the statute, even if this case merited such a tolling, ended sometime during the Civil Rights Era.

Plaintiffs never advanced any explanation in their pleadings as to why the limitations period should be tolled until June 19, 1982, the date two years prior to the filing of their lawsuit. The trial court and the Fifth Circuit concluded that no set of facts could exist which would toll the running of the statute until the year 1982.

4. The Fifth Circuit Case of *Cross v. Lucius*

Both the trial court and the Fifth Circuit noted that the plaintiff's case was closely analogous to the previous Fifth Circuit opinion in *Cross v. Lucius*, 713 F.2d 153 (5th Cir. 1983). In *Cross*, the plaintiffs complained of events that occurred in the 1920's, allegedly depriving the plaintiffs' family member of real property located in the state of Louisiana. The Fifth Circuit reviewed the dismissal on the basis of the limitations defense raised by the defendants. After examining the appropriate Louisiana state limitations provisions, the analysis turned to the plaintiffs' argument that the limitations period should be tolled because existing prejudice and racism kept them from obtaining the financial backing and legal representation needed to bring the suit. *713 F.2d at 157*. The court analyzed the Louisiana estoppel doctrine (analogous in effect to the Texas fraudulent concealment doctrine), and noted:

> Even if the plaintiffs' allegations that they could not have obtained legal representation during the earlier part of this century because no lawyer would represent a black person in a suit against a white person are true, the plaintiffs conceded at oral argument that this situation had improved by the 1960s, perhaps as a result of the upsurge in civil rights litigation during that period. The plaintiffs still delayed twenty years from that time until they brought this action.

713 F.2d at 158.

Plaintiffs have tried throughout the course of litigation to distinguish their situation from that of the plaintiffs in *Cross;* however, as in the prior case, the Willis descendants in fact: a) failed to adequately allege that any defendant prevented the plaintiffs from pursuing their claim or kept them in ignorance of their cause of action; b) failed to show that any legal barrier kept them from bringing this action earlier than June 19, 1984; and c) failed to show that plaintiffs exercised diligence in trying to pursue the claims in the court system. *713 F.2d at 158.* No effort was ever made to articulate *any* explanation for the fact that Plaintiffs waited until the year 1984 until attempting to bring this suit. As the Fifth Circuit noted, in the absence of specific factual allegations related directly to the Willis family and their particular situation regarding access to the courts, Plaintiffs failed to present a set of facts that would justify tolling the statute of limitations for nearly one hundred years until the date suit was finally filed.

5. *Hohri v. United States*

Plaintiffs assert in their Petition to this Court that the lower courts' decisions are in opposition to this Court's

position in *United States v. Hohri*, 482 U.S. 64, 96 L.Ed.2d 51 (1987). The opinion of this Court in *Hohri* reflects that judgment was entered concerning the issue of jurisdiction only and the Court did not address the merits of the decision of the Court of Appeals (including the limitations issue). Plaintiffs attempt to read into the opinion tacit approval by this Court that the claims addressed in *Hohri* were not barred by limitations due to an equitable tolling argument.

The subsequent history of the *Hohri* case after remand is instructive. The district court for the District of Columbia dismissed the case under Rule 12(b)(1), based upon the plea of the defendant, the United States, that the claim was barred by the applicable statute of limitations. *Hohri v. United States*, 586 F. Supp. 769 (D.D.C. 1984). Judge Oberdorfer noted the following regarding the limitations statute:

> The length of a statute of limitations is a product of a legislative weighing of competing claims of fairness – the need of the plaintiffs for a reasonable amount of time within which to present their claims, and the right of defendants to be free of stale claims. Statutes of limitations also protect both the Court and the defendant from cases where the loss of evidence – by death or disappearance of witnesses, fading memories, or disappearance of documents – may frustrate the search for truth.

586 F.Supp. at 785, citing, United States v. Kubrick, 444 U.S. 111, 117, 62 L.Ed.2d 259 (1972). The district court concluded that in *Hohri*, as in the present case, the statute of limitations ran long before the suit was filed. *586 F. Supp. at 785.*

The *Hohri* plaintiffs further argued that even if the claim was facially barred by the limitations statute, the statute was in fact tolled because of fraudulent concealment. In answer to this claim, the district court reviewed the historical background of the claim to determine at what point in time the plaintiffs, through due diligence, could have discovered the existence of their claim. *586 F. Supp. 787-90.* The court noted that once a plaintiff is on inquiry that has a potential claim, the statute begins to run. *Id. at 790-91.* The court also rejected the plaintiffs' further argument that certain "aggravating factors" existed which should be weighed in judging the plaintiff's due diligence in discovering his claim. *Id.*

The United States Court of Appeals for the Federal Circuit affirmed Judge Oberdorfer's decision that the claims were barred by the statute of limitations. *Hohri v. United States,* 847 F.2d 779 (Fed. Cir. 1988). This Court denied the petition for Writ of Certiorari on October 31, 1988. ___ *U.S.* ___, *109 S.Ct. 307 (1988).* In light of the subsequent history of *Hohri,* the Fifth Circuit's decision in this case is, in fact, in complete agreement with the *Hohri* case.

B. Dismissal of the Case Under Rule 12(b)(6) was Proper Because the Claim Failed to State a Cause of Action Against Any of the Defendants

The trial court dismissed the claim not only because suit was barred by the statute of limitations, but also because the complaint failed to assert that any named defendant actually violated the federally protected rights of any of the plaintiffs. The language of the Civil Rights Act is clear; suit may only be maintained against those

persons who actually violated the rights of the Plaintiff. For example, Section 1983 does not provide for liability under the theory of respondeat superior; only those persons or entities directly involved in the wrongdoing are liable under the Act. *Monell v. Department of Social Services*, 436 U.S. 658, 56 L.Ed.2d 611 (1978); *Cross*, 713 F.2d at 159 (Clark, J., concurring).

The plaintiffs' generalized claims of wrongdoing extend to certain unnamed, unknown individuals who lived decades ago, as well as to the unknown members of the Ku Klux Klan, and certain unknown public officials living at or near the time of Anderson Willis. Nowhere is there a single factual complaint against Judge Alderman, any identified members of the Freestone County Sheriff's Department, or any other Freestone County officials. Plaintiffs complained of a certain alleged incident between Patsy Stroud and Jeannette Willis Atkins; that incident, if it occurred, occurred subsequent to the filing of the present lawsuit.

The complaint clearly failed to allege any specific factual allegation against any of the Freestone County Defendants which would support a judgment for the Plaintiffs under 42 U.S.C. Section 1983.

C. Based Upon the Foregoing, the Decision of the Fifth Circuit in This Case Does Not Warrant Review by This Court Through the Plaintiffs' Petition for Writ of Certiorari

The trial court concluded that the Plaintiffs' suit should be dismissed because the pleadings affirmatively showed that the claim was barred by the statute of limitations and that the complaint failed to state a cause of

action against the particular defendants. The Fifth Circuit affirmed, finding that this particular set of facts did not justify tolling the statute of limitations. No unique or important federal question is presented by the Plaintiffs' case. This Court has previously affirmed that state limitations statutes and tolling procedures are not inconsistent with the policies behind the Civil Rights Act; having followed this Court's directions in ascertaining the appropriate limitations period, the lower courts' decisions were proper. Since the Fifth Circuit's opinion does not conflict with any previous opinions of another circuit or of this Court on the same matters, and since no important question of federal law is presented by the decision, the petition for writ of certiorari should be denied.

CONCLUSION

For all of the reasons set out above, this Court is respectfully requested to deny the Petition for Writ of Certiorari filed by the Plaintiffs.

Respectfully submitted,

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